

Amendment No. 2 to HB1851

**Fitzhugh
Signature of Sponsor**

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Date _____

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Comm. Amdt. _____

AMEND Senate Bill No. 1325*

House Bill No. 1851

By deleting all of the language following the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 17, is amended by adding the following language as a new, appropriately designated part thereto:

Section 39-17-1801. This part shall be known and may be cited as the "Non-Smoker Protection Act".

Section 39-17-1802. As used in this part, unless the context requires otherwise:

(1) "Acceptable form of identification" means:

- (A) A state-issued driver license;
- (B) A state-issued identification card;
- (C) A valid passport; or
- (D) A valid military identification;

(2) "Age-restricted venue" means a legal establishment that affirmatively restricts access to its buildings or facilities at all times to persons who are twenty-one (21) years of age or older by requiring each person who attempts to gain entry to such buildings or facilities to submit for inspection an acceptable form of identification for the express purpose of determining if the person is twenty-one (21) years of age or older;

(3) "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit and a person who volunteers such person's services for a non-profit entity; and

(4) "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, educational

institution, trust, or non-profit entity that employs the services of one (1) or more individual persons;

(5) "Enclosed area" means all space between a floor and ceiling that is enclosed on all sides by solid walls or windows, exclusive of doorways, which extend from the floor to ceiling;

(6) "Health care facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities;

(7) "Person" means an individual, partnership, committee, association, corporation or any other organization or group of persons;

(8) "Place of Employment" means an enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility;

(9) "Private club" means any club or organization that does not permit the general public access to its facilities or activities. Access is denied to anyone who does not agree or adhere to the rules of membership. In order to be considered a private club or organization for purposes of this part, the club or organization shall adhere to all of the following criteria:

(A) Have a permanent mechanism to carefully screen applicants for membership on subjective rather than objective factors;

(B) Limit access and use of facilities, services and activities of the organization to members and guests of the members;

(C) Be controlled by its membership and operate solely for the benefit and pleasure of its members; and

(D) Advertise exclusively and only to its members, excluding membership drives;

"Private club" also means any institution or organization that has received a determination of exemption from the internal revenue service under 26 U.S.C. § 501(c)(19);

(10) "Public place" means an enclosed area to which the public is invited including, but not limited, to banks, educational facilities, health care facilities, hotel and motel lobbies, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, recreational facilities, retail service establishments, retail stores, shopping malls, sports arenas, theaters, places of employment and waiting rooms;

(11) "Restaurant" means an eating establishment, including, but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant;

(12) "Retail tobacco store" means a retail store that derives its largest category of sales from tobacco products and accessories;

(13) "Service line" means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money;

(14) "Shopping mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments;

(15) "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form; and

(16) "Sports arena" means sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

Section 39-17-1803.

(a) Smoking is prohibited in all enclosed public places within the state of Tennessee including, but not limited to, the following places:

(1) Aquariums, galleries, libraries, and museums;

(2) Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public including, but not limited to, banks, laundromats, factories, professional offices, and retail service establishments;

(3) Child care and adult day care facilities;

(4) Convention facilities;

(5) Educational facilities, both public and private;

(6) Elevators;

(7) Health care facilities;

(8) Hotels and motels;

(9) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities;

(10) Polling places;

(11) Public and private transportation facilities, including trains, buses, taxicabs and airports under the authority of state or local governments, and ticket, boarding, and waiting areas of public transit depots;

(12) Restaurants;

(13) Restrooms, lobbies, reception areas, hallways, and other common-use areas;

(14) Retail stores;

(15) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the state of Tennessee or a political subdivision of the state, to the extent the place is subject to the jurisdiction of the state;

(16) Service lines;

(17) Shopping malls;

(18) Sports arenas, including enclosed public places in outdoor arenas; and

(19) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

(b) This prohibition on smoking shall be communicated to all existing employees and to all prospective employees upon their application of employment.

Section 39-17-1804. Notwithstanding any other provision of this part to the contrary, the following areas shall be exempt from the provisions of §39-17-1803:

(1) Age-restricted venues;

(2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided that no more than twenty-five percent (25%) of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor shall be contiguous and smoke from these rooms shall not infiltrate into areas where smoking is prohibited pursuant to the provisions of this part;

(3) All premises of any manufacturer, importer, or wholesaler of tobacco products, all premises of any tobacco leaf dealer or processor, and all tobacco storage facilities;

(4) Non-enclosed areas of public places, including:

(A) Open air patios, porches or decks;

(B) Any area enclosed by garage type doors on one (1) or more sides when all such doors are completely open; and

(C) Any area enclosed by tents or awnings with removable sides or vents when all such sides or vents are completely removed or open.

Smoke from such areas shall not infiltrate into areas where smoking is prohibited pursuant to the provisions of this part;

(5) Nursing homes and long term care facilities licensed pursuant to title 68, chapter 11; provided that such exemption shall only apply to residents of such facilities and that resident smoking practices shall be governed by the policies and procedures established by such facilities. Smoke from such areas shall not infiltrate into areas where smoking is prohibited pursuant to the provisions of this part;

(6) Private businesses with three (3) or fewer employees where, in the discretion of the business owner, smoking may be allowed in an enclosed room not accessible to the general public. Smoke from such

room shall not infiltrate into areas where smoking is prohibited pursuant to the provisions of this part;

(7) Private clubs; provided that such exemption shall not apply to any entity that is established solely for the purpose of avoiding compliance with this part;

(8) Private homes, private residences and private motor vehicles, unless such homes, residences and motor vehicles are being used for child care or day care or unless the private vehicle is being used for the public transportation of children or as part of health care or day care transportation;

(9) Retail tobacco stores that prohibit minors on their premises; and

(10) Commercial vehicles when such vehicle is occupied solely by the operator.

Section 39-17-1805. "No Smoking" signs or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted at every entrance to every public place and place of employment where smoking is prohibited by this part by the owner, operator, manager, or other person in control of that place.

Section 39-17-1806.

(a) This part shall be enforced by the department of health in those enclosed public places otherwise regulated by the department. This part shall be enforced by the department of labor and workforce development in those enclosed public places otherwise regulated by the department. If neither department otherwise regulates an enclosed public place where smoking is prohibited pursuant to the provisions of this part, the department of labor and workforce development shall enforce the

provisions of this part therein. The commissioner of health or the commissioner of labor and workforce development may apply for injunctive relief to enforce such provisions in any court of competent jurisdiction.

(b) Notice of the provisions of this part shall be given to all applicants for a business license pursuant to title 67, chapter 4, part 7.

(c) Any person who desires to register a complaint under this part may initiate such complaint with the department of health or the department of labor and workforce development or both.

(d) The department of health and the department of labor and workforce development shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this part.

(e) An owner, manager, operator, or employee of an establishment regulated by this part shall inform persons violating this part of the appropriate provisions thereof.

Section 39-17-1807.

(a) A person who knowingly smokes in an area where smoking is prohibited by the provisions of this part shall be subject only to a civil penalty of fifty dollars (\$50).

(b) A person who owns, manages, operates or otherwise controls any public place where smoking is prohibited pursuant to the provisions of this part and who knowingly fails to comply with any provision of this part shall be subject to the following:

(1) For a first violation in any twelve-month period, a written warning from the department of health or department of labor and workforce development, as appropriate;

(2) For a second violation in any twelve-month period, a civil penalty of one hundred dollars (\$100); and

(3) For a third or subsequent violation in any twelve-month period, a civil penalty of five hundred dollars (\$500).

(c) Each day on which a knowing violation of this part occurs shall be considered a separate and distinct violation.

Section 39-17-1808. The department of health and the department of labor and workforce development shall engage in a continuing program to explain and clarify the purposes and requirements of this part to all persons affected by the Non-Smoker Protection Act.

Section 39-17-1809. The commissioner of health and the commissioner of labor and workforce development shall annually request other governmental and educational agencies to establish local operating procedures in cooperation and compliance with this part.

Section 39-17-1810. No provision of this part shall be construed to permit smoking where it is otherwise restricted by other applicable laws.

SECTION 2.

(a) The department of health in consultation with the department of labor and workforce development is authorized to promulgate rules and regulations to effectuate the provisions of this act.

(b) The department of labor and workforce development, in consultation with the department of health, is authorized to promulgate rules and regulations to effectuate the provisions of this act.

SECTION 3. This act shall be liberally construed so as to further its purposes.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect on October 1, 2007, the public welfare requiring it.